Supreme Court, U.S.
FILED
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OFFICE OF

No.

IN THE

# Supreme Court of the United States

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ROSE & STANLEY SPITZER

V.

TRANS UNION, LLC

---

On Petition For Writ Of Certiorari to
The United States Court of Appeals
for the Fourth Circuit

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## PETITION FOR WRIT OF CERTIORARI

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ROSE SPITZER
STANLEY SPITZER
119 HICKORY ST.
HERTFORD, NC 27944
RES. (252) 426-1769
WORK (252) 482-4372

28 pp

## QUESTIONS PRESENTED

Question 1. Under what circumstances, if any, does a judge have legal authority to deny a citizen, having verifiable complaints, his or her right to trial?

Question 2. Can a judge dismiss a case in its entirety where said judge's ruling is not applicable to the many other violations complained of under other sections of the cited law?

Question 3. Is a judge's characterization of "unfortunate carelessness" on the part of the defendant, sufficient under Federal Rules of Civil Procedure, Rule 56, to not allow plaintiffs' complaints to trial?

Question 4. Where no precedent exists in a Federal law issue of particular importance to consumers, can the matter be unilaterally judged and dismissed without benefit of argument before a trier of fact?

Question 5. Is the disinterest of the 4th Circuit Court, compared to the detailed published interests of other Circuit Courts, in matters involving the exact same defendant and the same unfortunate carelessness under law, and resulting in divergent Court opinions with the 4th Circuit, sufficient grounds to move this Court to grant our writ petition?

## LIST OF PARTIES

A list of all parties to the proceeding in the court whose judgment is the subject of this petition is as follows:

For Trans Union,
Bruce S. Luckman, Esq.
SATZBERG, TRICHON, KOGAN & WERTHEIMER
1818 Market Street Philadelphia, PA 19103

Judge Terrence W. Boyle
c/o U.S. District Court for the Eastern District
P.O. Box 25670
Raleigh, NC 27611-5670

Note: The order of the 4th Circuit Court of Appeals was not signed and is unpublished.

The Justices on the Court at that time were:

Wilkins, Motz and Traxler
c/o U.S. Court of Appeals for the Fourth Circuit
1100 East Main Street, Suite 501
Richmond, VA 23219-3517

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Petitioner respectfully prays that a writ of certiorari issue to review the judgment below.

## OPINIONS AND ORDERS

The Order from the 4th Circuit Court of Appeals is unpublished and is not signed:

> "In accordance with the written opinion of this Court filed this day, the Court affirms the judgment of the District Court." (Appendix A)

The order from the District Court for the Eastern District of North Carolina, Northern Division, signed by Justice Terrence W. Boyle, states:

> "For the reasons discussed above, Defendant' Motion for Summary Judgment is hereby GRANTED in it entirety.*" (Appendix B)

*Note: Judge Boyle's "Analysis" in his order, addresses two of the 27 violation claims in this case wherein Summary Judgment is granted in its entirety.

## BASIS FOR JURISDICTION IN THIS COURT

Date of Order affirming judgment: February 7, 2001

Date of denial of Petition for Rehearing: March 27, 2001

Petitioner believes that the Court's jurisdiction in this matter is conferred by Article III, Section 2 of the United States Constitution.

## CONSTITUTIONAL PROVISIONS AND STATUTES RAISED IN THIS CASE

United States Constitution:

Amendment VII: "In suits at common law, where the value in controversy shall exceed twenty dollars, the right of trial by jury shall be preserved . . . "

Federal Rules of Civil Procedure:
Rule 56 Summary Judgment:

(d) Case Not Fully Adjudicated on Motion. "If on motion under this rule judgment is not rendered upon the whole case or for all the relief asked and a trial is necessary, the court at the hearing of the motion, by examining the pleadings and the evidence before it and by interrogating counsel, shall if practicable ascertain what material facts exist without substantial controversy and what material facts are actually and in good faith controverted. It shall thereupon make an order specifying the facts that appear without substantial controversy, including the extent to which the amount of damages or other relief is not in controversy, and directing such further proceedings in the action as are just. Upon the trial of the action the facts so specified shall be deemed established, and the trial shall be conducted accordingly."

From Notes on the standards the Federal Courts consider when ruling on motions for summary judgment:

"The purpose of summary judgment is to isolate, and then terminate, claims and defenses that are factually unsupported."

"Thus a party moving for summary judgment forces the opponent to come forward with at least one sworn averment of specific fact essential to that opponent's claims or defenses . . "

" A 'genuine issue' exists where the evidence before the court is of such a nature that a reasonable jury could return a verdict in favor of the non-moving party."

"Whether a fact is 'material' hinges on the substantive law at issue. A fact is material if it might affect the outcome of the case."

"The burden of going forward then shifts to the non-moving party to show, by affidavit or otherwise, that a genuine issue of material fact remains for the factfinder to resolve."

"In ruling on a motion for summary judgment, the court will never weigh the evidence or find the facts. Instead, the court's role under Rule 56 is narrowly limited to assessing the threshold issue of whether a genuine issue exists as to material facts requiring a trial.[25] Thus, the evidence of the non-moving party will be believed as true, all doubts will be resolved against the moving party, all evidence will be construed in the light most favorable to the non-moving party, and all reasonable inferences will be drawn in the non-moving party's favor."

## STATEMENT OF THE CASE

Rose and I, unable to communicate with Credit Reporting Agency Trans Union (TU), complained in state court of TU's 27 violations under the FCRA. TU moved the case to federal court where, without denying the evidence, TU claimed their reports were accurate and motioned to dismiss.

Cognizant of defendants' responsibility in avoiding dismissal, our memorandum referenced exhibits proving each violations cited. TU, knowing the evidence could not be denied, simply diverted the court with an issue we were not contesting; a bankruptcy application seeming as two because of a misfiling in one state and so moved to another, filed by our attorney to stop foreclosure while waiting on a court ruling. The ruling, coming down in our favor, the bankruptcy application was withdrawn.

Our memorandum warned, "Defendant points the Court down a road where this matter does not live" and went on to show an actual inaccuracy claim: Years of Double mortgage postings. "Both issued same day. In different amounts. On same house. Combining for a great deal of money yet terms only 5 years and running concurrently. Payments not adding up to alleged loan amounts. Yet identical monthly payments with credit limit shown as $100,000. Yet one loan alone was $200,000. We dislike the expression but it is appropriate here; give us a break."

Contrary to 56, where the rule is that the evidence of the non-moving party will be treated as true and that accuracy contests are to be allowed to a trier of fact, the court blocked our right to trial. Ignoring other cited FCRA violations, the court did rule on a first time issue this Court should find of interest in that, if not reversed, diminishes the rights of all consumers in Credit Reporting Agency files: The Consumer Statement issue, which we address under "Reasons For Granting Writ".

In a 4th Circuit appeal we additionally pointed out factual errors recited by the lower court, such as we paid money to TU, along with sequence errors, invented by the court. In an unpublished per curiam notice, the lower court was upheld.

We petitioned for a rehearing en banc. No judge indicated an interest in the matter.

We now are members of a growing Coalition, already numbering hundreds of 4th Circuit dismissed citizens. On behalf of those who do not have the wherewithal to pursue their grievances, we ask this Court's reaffirming that the rule of law is to be followed, that equal justice under law is to be a reality and that constitutional rights are not to wither, by starting with this petition. Take the time to read our briefs. Look at the undeniable evidence of the exhibits. Review the errors of the 4th Circuit. We, the people, need the Supreme Court's help in enlisting the courts back into the service of the people, as existing law intends.

## REASONS FOR GRANTING THE PETITION

The nature of the Supreme Court being to decide cases presenting issues of importance, beyond the particular facts and parties involved and, the Supreme Court being endowed as guardian of the constitution with its deeded commitment to the Rule of Law and to Constitutional Government, it is emphatically the province of this Court to say what the law is.

Relevant to Question 1

Amendment 7 of the Constitution preserves the right of trial by jury for all citizens. Rule 56 of the Federal Rules of Civil Procedure take away this right, within certain narrow limits. The problem is twofold: judges tending to push out the boundaries of Rule 56 limits. And different judges pushing limits to different extents.

In the pertinent parts of Rule 56:

Summary Judgment is not to be allowed unless a judge finds there is no genuine issue as to material facts. In our case material facts are so outrageously defined that any reasonable judge, taking the time to read one exhibit, would have to allow the case to trial. (See Appendix D. page 20)

While the adverse party must set fourth specific facts showing that there is a genuine issue for trial and while

the Supreme Court has emphasized that the opponent must come forth with at least one specific fact to survive summary judgment and while the definition of whether a genuine issue exists is predicated on evidence being of such a nature that a reasonable jury could return a verdict in favor of the non-moving party, the particular judge, controlling the life or death flow of a complaint to trial, must rule in the light most favorable to the non-moving party, particularly where the court has been guided by the non-moving party to the issues of fact sufficient to defeat summary judgement.

It must be emphasized that the court is not to weigh the evidence or find the facts. The court's role is narrowly limited to assessing the threshold issue of whether a genuine issue exists as to material facts requiring a trial. Thus, Rule 56 mandates that the evidence of the non-moving party will be believed as true, all doubts will be resolved against the moving party, all evidence will be construed in the light most favorable to the non-moving party and all reasonable inferences will be drawn in the non-moving party's favor. So long as more than one reasonable inference can be drawn, and that inference creates a genuine issue of material fact, the trier of fact is entitled to decide which inference to believe and summary judgment is not appropriate. Evaluating credibility, weighing evidence, and drawing factual inferences are all functions reserved for the jury. In our case (and all the horror stories we are now hearing) our lower court (and others), appear to be missing all of this.

Relevant to Question 2

Appellate Court findings abound with decisions that both affirm, reverse and remand to trial among the various differing complaints that make up a case. It would be troubling to justices on other circuit courts to see how a 4th Circuit Court decision condones dismissal of an entire case based on addressing selected issues while ignoring all others. And even more troubling, trying to justify summary judgment on the two selected issues in

our instance: One issue is covered under "Relevant to Question 4". The other relates to accuracy where the fact that we did not have two mortgages, as TU insisted on reporting year after year, is so stunningly a proven violation that just looking at the exhibits would move any reasonable judge to summary judgment in our favor. The fact that the judge's notice of dismissal never refers to the inaccurate additional mortgage, verifies our charge that the court did not take the time to read our papers. And, even had he looked at the evidence of our claim of no such mortgage and chosen to believe the defendant, matters deciding truth are to be left to a trier of fact and not appropriate grounds for dismissal of an entire case.

Relevant to Question 3

We do not find "carelessness" as remedy for violations under the FCRA. To the contrary, the FCRA was initiated to insure that Credit Reporting Agencies were not careless and that they "exercise their grave responsibilities with fairness ..". Yet the words and deeds of the District and 4th Circuit Courts are that all of our claimed violations are justifiably dismissed under their understanding that the defendant was merely careless.

Interestingly, that reasoning is turned around by other appellate courts concluding that the finding of carelessness might very well indicate that other claims could conceivably have merit. And, therefore, the case, weighed in the favor of the non-moving party, has to be allowed to a trier of fact.

Relevant to Question 4

We raise an interesting question in our case that, to the best of our knowledge, has not been addressed before: The placement of the consumer statement in a credit report. We cite the FCRA specific rule of "Clearly note". FCRA 611 (c) in concert with the law's general intent, "reasonable procedures. . . to meet the needs of commerce . . . fair and equitable to the consumer. ." FCRA 602 (b). And we present compelling arguments as to why, in the 60 second credit approval age, burying the consumer statement does not work. That the consumer's last resort to correct or

explain an adverse posting, must be placed where it's visibility conforms to the consumers needs and to the purpose of the FCRA's crafting in the first place.

Yet the court dismisses our complaining of TU's violating 611 (c) with the simplistic reasoning that, since the FCRA does not say exactly where to place a consumer statement, TU is turned loose to do as it pleases. Here is a clear example of how a first time issue is not to be allowed the light of day because a judge dismisses all opportunity of hearings on the merits. We ask this Court to stop this insidious creeping unsurping of power reserved for the citizenry by the constitution.

Relevant to Question 5

There are many examples of where other Circuit Courts stand in sharp contrast to the 4th Circuit's notion of the rules of law. We cite one here. In our instance the District Court says, "Plaintiffs appear likely to have met their burden as to the second element of a 1681e(b) claim, failure to follow reasonable procedures to assure maximum possible accuracy. Their account of Trans Union's response to their years of inquiry details a pattern of behavior that is unhelpful at best and unreasonably neglectful and careless at worst".

Grounds for dismissal? Of our entire case? Not if we had the good fortune to be heard in the 9th Circuit Court. There, in a similar case, with the same Trans Union as the moving party, and a similar litany of violations, and a district judge who found TU careless in their work habits, and who also let TU off the hook, the 9th Circuit Court found that such behavior could indeed indicate that TU might be liable for other FCRA violations. And, in Guimond v Trans Union 45 F.3d 1329, 1333 (9th Cir. 1995), Judge Fong reversed the lower court and remanded Guimond' claims to trial.

We had always taken equal justice under law as a right that was out there, should we ever need it - not something we have to fight for. As a veteran, I really do not mind a fight, if this Court, as the mandated referee, sees that it is a fair one. Others have expressed it better:

This U.S. Supreme Court: "Law repugnant to the Constitution is void . . ." the dismissal of suits without due process is law repugnant to the Constitution.

Judge Bourke: "to the objection that a rejection of a country's authority would be civil disobedience, the answer is that a court that issues orders without authority engages in an equally dangerous form of civil disobedience."

Jefferson: "Trial by jury is the best anchor yet imagined by which a government can be held to the principles of its constitution."

Boise: "The system does not work at all when judges become gatekeeping guard deciding who is to be allowed entry to a judicial stage and who is to be doomed the purgatory of forever talking to an empty house."

The Federalist Papers warn that, "How like other democracies, our democracy will fail if the people allow its rights granted them to be slowly taken away."

If divergence in interpreting the rule of law by individual judges, in different communities within this same country, is not contained by guided uniformity set forth by this Court, and citizens in some courts are allowed their constitutionally guaranteed right to trial while others are not, how can Equal Justice Under Law be seen as anything more than an architectural work or art adorning the entry to the people' court of last resort?

Somewhere we read that sooner or later all revolutions are celebrated. Let the ruling of this Court, on the important issues raised in these questions, be the start of the celebration.

APPENDIX A:

UNPUBLISHED

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

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No. 00-2097

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STANLEY SPITZER; ROSE SPITZER

versus Plaintiffs - Appellants,

TRANS UNION, LLC,

Defendant - Appelle.

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Appeal from the United States District Court for the Eastern District of North Carolina, at Elizabeth City. Terrence W. Boyle, Chief District Judge. (CA-99-24)

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Submitted:December 29, 2000 Decided:February 7, 2001

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Before WILKINS, MOTZ, and TRAXLER, Circuit Judges.

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Affirmed by unpublished per curiam opinion.

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Stanley Spitzer, Rose Spitzer, Appellants Pro Se. Keith Alan Williams, Greenville, North Carolina; Bruce S. Luckman, SATZBERG, TRICHON, KOGAN & WERTHEIMER, Philadelphia, Pennsylvania, for Appellee.

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Unpublished opinions are not binding precedent in this circuit. See Local Rule 36 (c).

PER CURIAM:

Stanley and Rose Spitzer appeal the district court's order granting summary judgment to Defendant in this action alleging violations of the Fair Credit Report Act. We have reviewed the record and the district court's opinion and find no reversible error. Accordingly, we affirm on the reasoning of the district court. Spitzer v. Trans Union, LLC, No. CA-99-24 (E.D.N.C. Aug. 2, 2000). We dispense with oral argument because the facts and legal contentions are adequately presented in the materials before the court and argument would not aid the decisional process.

AFFIRMED

APPENDIX B:

IN THE UNITED STATES DISTRICT COURT FOR
THE EASTERN DISTRICT OF NORTH CAROLINA
NORTHERN DIVISION
No. 2:99-CV-24-BO(2)

FILED

AUG. 2, 2000

DAVID W. DANIEL, CLERK
US DISTRICT COURT
E. DISTRICT N. CAROLINA

STANLEY SPITZER and ROSE SPITZER,
Plaintiffs,

ORDER

v.

TRANS UNION LLC,
Defendant.

This matter is before the Court on Defendant's Motion for Summary Judgment pursuant to Rule 56 of the Federal Rules of Civil Procedure. The underlying complaint alleges that Defendant Trans Union violated the Fair Credit Reporting Act, North Carolina's Unfair and Deceptive Trade Practices Act, and North Carolina common law by furnishing inaccurate information respecting two bankruptcies and a derogatory commercial real estate mortgage loan with Security Pacific. For the reasons given below, Defendant's Motion is GRANTED.

BACKGROUND

In February of 1997, Plaintiffs Stanley Spitzer and Rose Spitzer applied for a loan to refinance their home. During the application process, Plaintiffs claim to have learned that Defendant Trans Union, a consumer reporting agency, had included incorrect information in their credit report. Plaintiffs state that they contacted Defendant regarding the alleged misinformation,

repeatedly requesting that it be removed from their record. Plaintiffs allege that Trans Union replied with "computer generated form letters," but finally produced the address of Security Pacific to Plaintiffs, claiming that they had verified the entries. Plaintiffs claim that this address was incorrect, as it was four years out of date. Plaintiffs later admitted, in depositions, that the information was technically accurate, but complain that it did not fairly present the unusual circumstances of their story. Plaintiffs further charge that Defendant did not satisfactorily incorporate their explanatory consumer statement into the credit reports.

Plaintiffs, acting pro se, commenced this action in March, 1999 in the General Court of Civil Justice, Superior Court Division, for Perquimans County, North Carolina. Plaintiffs state claims under the Fair Credit Reporting Act, 15 U.S.C. § 1681 *et seq.*, North Carolina's Unfair and Deceptive Trade Practices Act, N.C.G.S. 75-1.1 *et seq.*, and North Carolina common law. Defendant removed the matter to this Court on April 14, 1999 and moved for summary judgment on November 1, 1999. Plaintiffs responded on December 14, 1999. Defendant filed its reply on January 5, 1999. Plaintiffs filed a reply on January 12, 1999. All issues are fully briefed and ripe for ruling.

## ANALYSIS

### *I. Summary Judgment Standard*

A motion for summary judgment cannot be granted unless there are no genuine issues of material fact for trial. Fed. R. Civ. P. 56(c); See Celotex Corp. v. Catrett, 477 U.S. 317 (1986). The movant must demonstrate the lack of a genuine issue of fact for trial, and if that burden is met, the party opposing the motion must "go beyond the pleadings" and come forward with evidence of a genuine factual disput. Id. at 324 (1986). The Court must view the facts and the inferences drawn from the facts in the light most favorable to the nonmoving party. See Matsushita Elec, Indus. Co. v. Zenith Radio Corp., 475 U.S. 574, 587-88 (1986). Conclusory allegations are

not sufficient to defeat a motion for summary judgment. Cf. Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 249 (1986).

*II. Plaintiff's § 1681e (b) Fair Credit Reporting Act Claim*

Plaintiffs state two causes of action under the Fair Credit Reporting Act ("FCRA"), 15 U.S.C. § 1681 *et seq.* Plaintiff's first FCRA claim arises under Section 1681 e(b), which states that "whenever a consumer reporting agency prepares a consumer report it shall follow reasonable procedures to assure maximum possible accuracy of the information concerning the individual about whom the report relates." It is well established that a case of "negligent noncompliance with § 1681 e(b) consists of four elements:" (1) inaccurate information was included in a consumer's credit report; (2) the inaccuracy was due to defendant's failure to follow reasonable procedures to assure maximum possible accuracy; (3) the consumer suffered injury; and (4) the consumer's injury was caused by the inclusion of the inaccurate entry. See, e.g., Philbin v. Trans Union Corp., 101 F. 3d 957, 963 (3rd Cir. 1996).

Defendant argues that the § 1681e(b) claim fails because the information reported was accurate and because Plaintiffs were not harmed by the inclusion of the information they allege is inaccurate. In support of this contention, Defendant relies upon Plaintiff Stanley Spitzer's depostition, in which he acknowledges that he and Plaintiff Rose Stanley Spitzer "in (their) negligence" signed a balloon mortgage for the benefit of his brother's business venture without reading the terms of the note. See Plaintiffs' Response at 2. Mr. Spitzer reports that his brother's "house of cards collapsed" and that his brother eventually defaulted on the loan, resulting in Plaintiffs' being forced to assume the payments. See Stanley Spiter Affidavit at 14-15.

Plaintiffs make several key admissions regarding the veracity of the items reported on their consumer report. First, Plaintiffs admit throughout their depositions that they made several late payments to Security Pacific. Plaintiffs do not contest the accuracy of Trans Union's reporting of these late payments, but note that they made double-payments whenever they missed a month" mortgage payment.

Next, Plaintiffs admit that they filed for bankruptcy to delay foreclosure on the collateral--their home--but note that they eventually made full payment to Trans Union and that the bankruptcy filing was dismissed. Plaintiffs maintain that the principal was "suddenly" due and that they were " presented with a $250,000 payment to be made in one lump sum." See Plaintiffs' Response at 2; Stanley Spitzer Affidavit at 14-15. They claim that they eventually transferred "a $400,000 income-producing waterfront property" to Security Pacific, the value of which exceeded their outstanding balance, and that Security Pacific made payment to them of the difference as a result.

Plaintiffs then admit that they filed for bankruptcy a second time in North Carolina. The record shows that this second bankruptcy arose from Plaintiffs' change of residence from New York to North Carolina, at which their New York bankruptcy was dismissed and Plaintiffs re-filed for backruptcy in North Carolina.

Finally, Plaintiffs argue that they "are not contending that (Defendant) violated the FCRA by furnishing inaccurate information respecting (the) two bankruptcies." See Plaintiffs' Response at 3. Rather, Plaintiffs contend that the inaccuracies of which they complain arise from Defendant's "taking the core of the vital explanation of (the bankruptcies) and willfully handicapping our sole relief in their reporting . . . bury(ing) our statement in the very end of our report." See Id. at 4.

These admissions doom Plaintiffs' case to failure by establishing the accuracy of Defendant's credit reports,

which details a record of late payments and two bankruptcies filed as a result of the same debt. Plaintiffs acknowledge that their true complaint is with the way in which Defendant framed these admittedly accurate entries. Plaintiffs are unhappy with Defendant's decision to report their consumer statement at the end of the credit report, arguing that a "credit reader" would not "bother to take (its) precious time to read beyond the very first two postings." Plaintiffs prefer that the explanations be listed directly underneath the bankruptcy postings.

In so arguing, Plaintiffs ignore their own correctly stated synopsis of the FCRA-that it "does not designate the location of () Consumer Statements." See Id. at 5. Section 1681i of the FCRA outlines the procedure to be followed in cases in which consumers dispute the completeness or accuracy of information contained in their file. If the agency reinvestigates the information but the dispute remains unresolved,-"the consumer may file a brief statement setting forth the nature of the dispute." 15 U.S.C. § 1681i(b). Once such a statement is filed, the agency must provide the statement or a summary of it "in any subsequent consumer report containing the information in question, "provided, however, that the statement need not be reported if "there is (sic) reasonable grounds to believe that it is frivolous or irrelevant." 15 U.S.C. § 1681i(c).[1]

Thus, it is clear that Plaintiffs state no valid claim of "inaccuracy" in Defendant's reporting of their credit history. Having admitted to their late payments and to twice filing for bankruptcy, Plaintiffs are left with no claims of actual inaccuracy, and thus cannot satisfy the first element of a § 1681e(b) claim. Accordingly, this Court finds that the information reported is complete and accurate, and that Defendant is entitled to summary judgment as to this cause of action.[2]

---

[1]The issue of whether Defendant's inclusion of the consumer statement was adequately reported, a question raised under § 1681i of the FCRA, is fully discussed in Section III below.

[2]This Court need not make any finding as to the other elements of a & 1681e(b) claim, but notes that even though the credit information reported is accurate, Plaintiffs appear likely to have met their burden as to the second element of a & 1681e(b( claim, "failure to follow reasonable procedures to assure maximum possible accuracy." Their account of Trans Union's responses to their years of inquiry details a pattern of behavior that is unhlepful at best and unreasonably neglectful and careless at worst.

*III. Plaintiff's & 1681i Fair Credit Reporting Act Claim*

Plaintiffs' second FCRA claim arises under Section 1681i. This section, discussed above, states that "if the completeness or accuracy of any . . . information contained in his file is disputed by a consumer, and such dispute is directly conveyed to the consumer reporting agency . . ., the consumer reporting agency shall. . . reinvestigate . . . information . . . If after such reinvestigation such information is found to be inaccurate or can no longer be verified, the consumer reporting agency shall promptly delete such information." 15 U.S.C. § 1681i(a).

"If the reinvestigation does not resolve the dispute, the consumer may file a brief statement setting forth the nature of the dispute." 15 U.S.C. § 1681i(b). "Whenever a statement of dispute is filed, unless there is reasonable grounds to believe that it is frivolous or irrelevant, the consumer reporting agency shall, in any subsequent consumer report containing the information in question, clearly note that it is disputed by the consumer and provide either the consumer's statement or a clear and accurate codification or summary thereof." 15 U.S.C. § 1681i(c).

Accordingly, a proper cause of action under § 1681i must state the following elements: (1) plaintiff disputed an item of information in his file; (2) any reinvestigation did not resolve this dispute; (3) plaintiff elected to file a statement of dispute; and (4) the statement of dispute was not included with subsequent copies of plaintiff's consumer report. See e.g. Guimond v. Trans Union, 45 F.3d 1329, 1335 (9th Cir. 1995).

As noted in Section II above, all parties agree that Defendant included Plaintiffs' statement of dispute in all

subsequent copies of Plaintiffs' consumer report. Thus, all parties agree that the final element of a § 1681i claim cannot be satisfied. Plaintiffs' dissatisfaction with the placement of their statement within the report will not suffice to state a proper cause of action § 1681i. For this reason, Defendant is entitled to summary judgment as to this cause of action as well.

*IV. Plaintiff's State and Common Law Claims*

Plaintiffs have failed to argue and thus appear to have abandoned their state and common law claims. Further, these claims are preempted and barred by the FCRA, which states that:

> Except as provided in Sections 616 [§1681n] and [§1681o], no consumer may bring any action or proceeding in then nature of defamation, invasion of privacy, or negligence with respect to the reporting of information against any consumer reporting agency ...except as to false information furnished with malice or willfull intent to injure such consumer.

15 U.S.C. § 1681h(e). As discussed above, Plaintiffs cannot show that the information provided was false or inaccurate. Defendant is therefore entitled to summary judgment as to these claims.

CONCLUSION

For the reasons discussed above, Defendant's Motion for Summary Judgment is hereby GRANTED in its entirety.

SO ORDERED.

This 30th day of July, 2000:

S/_____
TERRENCE W. BOYLE
CHIEF UNITED STATES DISTRICT JUDGE

I certify the foregoing to be a true and correct copy of the original.
David W. Daniel, Clerk
United States District Court
Eastern District North Carolina
By_____Deputy Clerk

APPENDIX C:

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

FILED MARCH 27, 2001

No. 00-2079
CA-99-24

STANLEY SPITZER; ROSE SPITZER
Plaintiffs - Appellants

TRANS UNION, LLC
Defendant - Appellee

On Petition for Rehearing En Banc

The appellants' petition for rehearing en banc was submitted to this court. As no member of this Court requested a poll on the petition for rehearing en banc,

IT IS ORDERED that the petition for rehearing en banc is denied.

For the Court,

/s/ Patricia S. Connor
CLERK

## APPENDIX D:

(The ruling of summary judgment, predicate on "no inaccuracy," indicates a failure to look at the evidence placed before the court in the opposition to summary judgment papers. This one of many exhibits, showing the defendant's years of erroneous reporting of two differently recorded mortgages with different terms, makes summary judgment inappropriate.) EXHIBIT of a Trans Union Credit Report.

P.O. Box 403
Springfield, PA 19064-0403
Return Service Requested

Your Trans Union File Numer: 97IH0630-073
Page 1 of 3 (Intl Use: CC 16NC 03)
Date this report printed: 07/31/98

Social Security Number: 133-14-1095
Birth Date: 03/26
You have been in our files since: 10/73

Consumer Report for:
SPITZER, STANLEY
46 Hickory St.
Hertford, NC 27944

Former Addresses Reported:
114 Midway Dr., Edenton, NC 27932
51 Shore Ln., Bay Shore, NY 11706

Employment Data Reported:
General Boats
Position: Owner
Date Reported: 08/77

Your Credit Information
The following items obtained from public records

appear on your report. You may be required to explain public record items to potential creditors. Any bankruptcy information will remain on your report for 10 years from the date of filing. Unpaid tax liens are reported indefinitely. All other public record information, including discharged Chapter 13 bankruptcy and any accounts containing adverse information, remain for 7 years.

Docket #9313682
Federal District
Chapter 13 Bankruptcy Dismissed

| | | |
|---|---|---|
| Assets: $0 | Entered: | 11/93 |
| | Amount: | $0 |
| | Paid: | 07/94 |
| | Liab: | $0 |

The following accounts contain information which some creditors may consider to be adverse. The adverse information in these accounts has been printed in >brackets< for your convenience, to help you understand your report. They are not bracketed this way for creditors. (Note: the account # may be scrambled by the creditor for your protection.)

Sec Pac Fin # 14052798
>Profit and Loss Write Off<
Verif'd 06/98 Balance: $175675
Opened 06/87 Most Owed: $175675
Closed 06/93 >Past Due: $65000<
>Status as of 6/93: Charged off as Bad Debt<
Installment Account
Real Estate Mortgage
Joint Account
Pay Terms: 60 Monthly $2799

Report on SPITZER, STANLEY
Social Security Number: 133-14-1095
Trans Union File Number: 97IH0630-073

Sec Pac Fin # 1c73072687
Verif'd 06/98 Balance: $0
Opened 06/87 Most Owed: $199987
>Status as of 6/98: 60 Days Past Due<
>In prior 14 months from date Verif'd 1 time 60 days, 3 times 30 days late<
>Maximum Delinquency of 60 Days Occurred in 4/92<
Mortgage Account
Real Estate
Joint Account
Pay Terms: 60 Monthly $2799
Credit Limit: $100000

The following accounts are reported with no adverse information.

## APPENDIX E:

## ERRORS IN DISTRICT COURT ANALYSIS

The District Court's errors warrant the 9th Circuit's logic that this carelessness could indeed indicate that the violations are triable.

Court: "applied for loan to refinance the house" Wrong. TU's errors were discovered much later when buying another home.

Court: "(TU) finally produced address of Security Pacific (information suppler) to (plaintiffs)". Wrong. Never to this day has TU been able to tell us how to reach the supplier of their adverse information.

Court: "Plaintiffs later admitted that information was technically accurate." Wrong. Court mixes up the subject matter. Bankruptcy listing was technically accurate since we did apply but as a result of court ruling in our favor, withdrew. Mortgages were never accurate. There were never two morgages and the one that did exist was inaccurately reported.

Court: "negligence noncompliance consists of four elements" Wrong implication. Law does not say a CRA is only in violation if all 4 elements are proven. Plus other Circuit Courts have ruled that all 4 elements are not essential to prevail in a FCRA case.

Court: "and bankruptcy filing was dismissed." Wrong. Another Court overturned SP foreclosure action making need for Bankruptcy moot.

Court: "Plaintiffs then admit that they filed for bankruptcy a second time." Wrong. Once settlement was made with SP and SP made payment to us, there was no need for another bankruptcy after that.

Court: "Plaintiffs contend that the inaccuracies of which they complain arise from (the consumer statement issue in reference to the bankruptcies). And, "Thus it is clear that Plaintiffs state no valid claim of inaccuracy . . . and accordingly, this Court finds that the information reported is complete and accurate." Wrong. Our

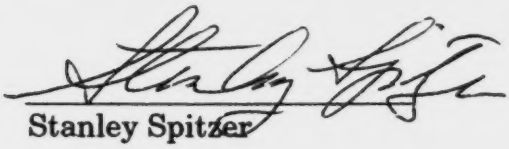
complaints, relate to the fantasy second mortgage and the inaccurate reporting on the only mortgage, inaccuracy violations provable beyond any doubts, but which the court refuses to look at or acknowledge. Further, it is not the court's role to decide who is telling the truth.

Court turns to Consumer Statement issue: "Plaintiff dissatisfaction with the placement of their statment within the report will not suffice to state a proper cause of action." Wrong. The court ignores the "clearly note" specific provision of the section and the do-what-is-right-by-the-consumer general intent of the FCRA. If the court's logic is to be allowed, TU could fine print the statement in Greek. The obvious point is that, what constitutes the value of the statement in relation to how it is treated by the CRA in relation to the needs of commerce and the consumer, is a matter to be left to a jury.

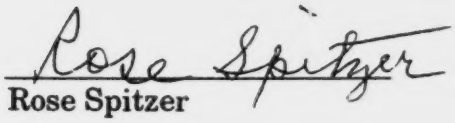
## CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,



Stanley Spitzer



Rose Spitzer

Rose & Stanley Spitzer
Date: June 25, 2001